IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1103 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant
Versus
RAMESHBHAI AMATHABHAI RABARI & 1 – Respondents

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Appearance :
MR MUKESH PATEL ADDL PP for Appellant : 1,
MR DK MODI for Respondent : 1,
MR KR RAVAL for Respondent : 2,

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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 13/06/2006

ORAL JUDGMENT

1.Heard Shri Mukesh Patel, learned Addl.P.P. for the appellant State of Gujarat, Shri D.K. Modi for the respondent No. 1 – original accused and Shri K.R.

Raval, learned advocate for the respondent No. 2 – original complainant.

2.This acquittal appeal is preferred by the State of Gujarat under Section 378 of the Code of Criminal Procedure (hereinafter referred to as 'the Code' for short) challenging the order dated 26.9.1995 passed by the learned Judicial Magistrate First Class, Deesa in Criminal Case No. 934 of 1992 acquitting the respondent No. 1 – original accused of the charges under Sections 7 and 16 of the Prevention of Food Adulteration Act (hereinafter referred to as 'the Act' for short). The appeal was admitted by this Hon'ble Court (Coram: Ms. R.M. Doshit, J.) vide order dated 6.2.1997 as the leave was granted.

3.The respondents appeared to be duly served, however at the time of hearing the matter, none appeared for the respondent No. 1, therefore, learned counsel Shri D.K. Modi was requested to assist the Court on behalf of respondent No. 1 and Shri Modi has accepted the request.

4.The facts in brief deserves to be set out as

under:-

4.1 The original complainant – Food Inspector on 29.1.1992 at 11-30 AM intercepted the accused, who was passing by on bye-cycle for vending milk. The complainant introduced himself to the accused as Food Inspector and in presence of panch witness Babubhai Kalabhai, purchased 900 ml. of milk on payment of Rs.5=40ps. The necessary notice disclosing his intention to send the samples to the Public Analyst was issued. The cash memo was issued and the receipt was also issued by the respective parties. The milk was collected with the milk measuring unit of 500 and 100. As revelled from the record, the milk sample was divided into three equal parts and collected in dried, odourless, cleaned glass bottles and they were duly sealed in accordance with law. Before sealing the bottles, the required preservatives were added. After affixing the Local Health Authority seal etc. on the seal, one part of the sample food article was sent to the Public Analyst and remaining two parts were sent to Local Health Authority. At the time of

sending the samples to the Public Analyst and Local Health Authority, the procedure for sending, sealing etc. were strictly followed. On receipt of the report from the Public Analyst stating that the buffalo milk sample was not confirming to the standards prescribed under the Act and Rules, the requisite papers were prepared and submitted before the Local Health Authority for obtaining appropriate sanction for lodging prosecution against the accused. The appropriate authority issued sanction for lodging the prosecution and on that basis, the Criminal Case No. 934 of 1992 came to be lodged against the accused. It has also come on record that after lodging the criminal case, the Local Health Authority issued requisite notice under Section 13(2) of the Act intimating the accused about his right to afford an opportunity of further testing the samples before the Central Food Laboratory. Alongwith the notice, the report of the Public Analyst was also sent. The trial Court after recording the evidence, has come to the conclusion that the accused deserves to be granted benefit of

doubt as the prosecution has failed to prove its case beyond doubt. Having been aggrieved and dissatisfied with the findings and order of acquittal, the State has preferred the present Appeal under Section 378 of the Code.

5.Shri Patel, learned Addl.P.P. urged that the report of the Public Analyst is clear in its contents. It is revelled that the sample food article was not in conformity with the standards of buffalo milk. The fat content, was less than the prescribed standard and the solid not fat was also not as per the prescribed standard. The reasoning adopted by the trial Court is untenable in eye of law in as much as the trial Court has proceeded on the premise that the accused might have sold the mixed milk of cow and buffalo. Shri Patel has submitted that there was no evidence supporting the say of the accused. The submission that it was mixed milk of cow and buffalo, cannot be believed and it ought not to have been believed by the trial Court. The leniency shown by the trial Court was misplaced and it was not in accordance with law and the trial

Court ought to have recorded the conviction. Shri Patel has submitted that the deposition of the complainant is enough to bring home the guilt on the part of the accused coupled with the fact that other documentary evidence also go to show that the food article in question was not in conformity with the standard laid down under the Prevention of Food Adulteration Rules (hereinafter referred to as 'the Rules' for short). Shri Patel has submitted that in view of this, the judgment deserves to be quashed and set aside and the accused is to be dealt with in accordance with law.

6.Shri Modi, learned counsel for the respondent No. 1 has submitted that original accused i.e. respondent No. 1 has a right to support the order of acquittal on the grounds independent and different than those relied upon by the learned trial Court. Shri Modi has submitted that this being an acquittal appeal, the entire record and proceedings deserves to be perused minutely so as to ascertain whether there is justification for altering the acquittal. Shri Modi has invited this court's attention to the

deposition of the complainant, wherein, though it is mentioned that the utensils used for collecting the samples were dried, odourless and cleaned, it cannot be said to be sufficient to prove the due compliance of provision of Rule 14 of the Rules. The milk in question was collected with the help of measuring units of 500 and 100. The same also ought to have been cleaned and dried properly alongwith glass bottles, which were used for collecting the samples. Shri Modi has relied upon the decision of this Court in case of ***State of Gujarat Vs. Gulamnabi Mahmadbhai Vohra*** in Criminal Appeal No. 249 of 2000 dated 21.3.2001, in support of his contention that the duty is cast upon the prosecution not only to comply with the mandatory provision of law by using clean and dry bottles for storing the sample but also to satisfy the Court by leading evidence that the bottles used were clean and dry. Shri Modi has submitted that thus, all the utensils including the measuring units, which were used for collecting the sample from the can of milk, were required to be cleaned and dried in

accordance with provisions of Rule 14 of the Rules and it was the duty cast upon the prosecution to prove that they were neat and clean and they were cleaned in accordance with Rule 14 of the Rules. The record of this case show that except cryptic deposition in respect of cleanliness, there is no evidence whatsoever have been proved showing the complete compliance of Rule 14 of the Rules. Shri Modi has submitted that in the cross examination of the complainant, a suggestion is clearly made that utensils and vessels were not cleaned and dried in accordance with Rule 14 of the Rules. In light of such suggestion, it was the burden of the prosecution to prove the complete compliance of Rule 14 of the Rules by leading cogent and positive evidence. Shri Modi has submitted that this ground alone is sufficient to support and sustain the order of acquittal. Shri Modi has submitted that the documentary evidence have been produced in bunch without properly proving them as required under the law. Shri Modi has submitted that the documents ought to have been proved in accordance

with law and as it is not done in the present case, as can be seen from the record, one more ground is available to the respondent No. 1 for supporting his acquittal.

7. Shri Patel, learned Addl.P.P. has vehemently urged that the documents produced in bunch are all official documents and it need not be descriptively explained and are sufficient proof of its genuineness and no question is raised in a cross-examination.

8. This court has perused the records and heard the counsel of the parties at length. This court, though may not in complete agreement with the reasoning assigned by the trial Court for recording acquittal, is of the opinion that the acquittal needs to be sustained on a ground of want of proper compliance with Rule 14 of the Rules and other points. The judgments cited by Shri Modi on all it fours is applicable to the facts of the present case also. Shri Modi has relied upon the decision of this Court rendered in Criminal Appeal No. 249 of 2000 dated 21.3.2001 in support of his

submission that duty is cast upon the prosecution not only to comply with the mandatory provision of law by using clean and dry bottles for storing the sample but also to satisfy the Court by leading evidence that the bottles used were clean and dry. Shri Modi has also relied upon the decision of this Court in case of ***State of Gujarat Vs. Gayatri Doodh Dairy*** in Criminal Appeal No. 431 of 1990 decided on 23.7.1997 and also of ***State of Gujarat Vs. Navinchandra V. & Sons*** in Criminal Appeal No. 1116 of 1991 decided on 8.9.2000 in support of his submission that the measurement units, which are used at the time of collecting the sample, are required to be cleaned. Shri Modi has also relied upon the judgment in case of ***Sait Tarajee Khimchand and others Vs. Yelamarti Satyam and others,*** reported in AIR 1971 SC 1865, in support of his submission that the filing of document is not enough but needs to be proved in accordance with law.

9. The deposition of the complainant go to show that the measuring units used at the time of collecting

the sample was not cleaned or at least there is no evidence positively coming on the record about its cleanliness. The prosecution, therefore, can be said to have been failed in establishing the complete compliance with the provisions of Rule 14 of the Rules and therefore, on this ground also, the acquittal order deserves to be sustained. Looking to the facts and circumstances of the case and the serious doubt about the compliance with mandatory provisions of the Rules, the order of acquittal does not deserve to be disturbed in this acquittal appeal.

10. This being an acquittal appeal, the Court would ordinarily be slow in interfering with the order of acquittal, unless and until it is established by the appellant that the order impugned is being so perverse and illegal, which has resulted into miscarriage of justice and in absence of any such plea and looking to the totality, this court is of the view that the judgment of the trial Court recoding acquittal impugned in the present appeal does not call for any interference and the appeal

deserves to be dismissed.

11. For the aforesaid reasons, this court is not inclined to interfere with the trial Court's order of acquittal and appeal, therefore deserves to be dismissed and is dismissed accordingly.

(S.R.BRAHMBHATT, J.)

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